

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Michael D. Laufer

Application No.: 09/095,323

Confirmation No.: 9521

Filed: June 10, 1998

Art Unit: 3769

For: METHOD AND APPARATUS FOR  
TREATING SMOOTH MUSCLES IN THE  
WALLS OF BODY CONDUITS

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Examiner: D. M. Shay

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir/Madam:

In response to the Notification of Non-Compliant Appeal Brief mailed September 10, 2009, Applicant respectfully resubmits the following appendices: Claims Appendix, Evidence Appendix and Related Proceedings Appendix. The headings of the appendices have been corrected. In addition, the status identifier for claim 55 in the Claims Appendix has been corrected.

If any fee is due for consideration of this paper, please charge our Deposit Account No. 50-0665, under Order No. 649218007US, from which the undersigned is authorized to draw.

Dated: 10 Oct. 2009

Respectfully submitted,

By PTP

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**CLAIMS APPENDIX**

**Claims Involved in the Appeal of Application Serial No. 09/095,323**

1-28. (Cancelled)

29. (Previously Presented) The method of Claim 50, wherein said irradiating step is performed by emitting a light energy having a wavelength of about 240 nm to about 280 nm.

30. (Previously Presented) The method of Claim 50, wherein said irradiating step is performed by emitting light energy having a wavelength in the red visible range.

31. (Previously Presented) The method of Claim 50, wherein said irradiating step is performed by exposing the walls to radiation emitted by a radioactive pellet.

32. (Previously Presented) The method of Claim 50, wherein said irradiating step is performed by moving an energy delivery device along the airway.

33. (Previously Presented) The method of claim 50, wherein irradiating walls of the airway also causes debulking over time in mucus gland cells and prevents the mucus gland cells from replicating.

34. (Original) The method of Claim 33, wherein said irradiating step is performed by emitting a light energy having a wavelength of about 240 nm to about 280 nm.

35. (Previously Presented) The method of Claim 33, wherein said irradiating step is performed by emitting a light energy having a wavelength in a red visible range.

36. (Original) The method of Claim 33, wherein said irradiating step is performed by exposing the walls to radiation emitted by a radioactive pellet.

37. (Original) The method of Claim 33, wherein said irradiating step is performed by moving an energy delivery device along the airway.

38-49. (Cancelled)

50. (Previously Presented) A method for treating asthma to relieve asthmatic symptoms, the method comprising:

providing a source of energy; and

irradiating walls of an airway of an asthmatic lung with the source of energy at a wavelength and intensity which, over time, causes debulking of smooth muscle tissue of the asthmatic lung and prevents the lung tissue from replicating, wherein said irradiating step is performed by irradiating smooth muscle tissue in the asthmatic lung such that the ability of the airway to contract is reduced.

51. (Cancelled)

52. (Previously Presented) The method of claim 50, further comprising placing a visualization system into the airway.

53. (Previously Presented) The method of claim 52, wherein the visualization system comprises an endoscope or bronchoscope.

54. (Previously Presented) The method of claim 32, wherein moving the energy delivery device along the airway comprises moving the energy delivery device in a uniform painting-like motion.

55. (Previously Presented) The method of claim 54, wherein moving the energy delivery device in the uniform painting-like motion comprises moving the entire energy delivery device either manually or by the motor.

56. (Previously Presented) The method of claim 50, wherein irradiating walls of the airway with the source of energy comprises using an energy selected from a group consisting of infrared, visible, and ultraviolet.

57. (Previously Presented) The method of claim 56, wherein irradiating walls of the airway with the source of energy comprises using incoherent light.

58. (Previously Presented) The method of claim 56, wherein irradiating walls of the airway with the source of energy comprises using coherent light.

59. (Previously Presented) The method of claim 50, wherein irradiating walls of the airway with the source of energy comprises irradiating the walls of the airway at an intensity sufficiently bright to penetrate mucus in the airway.

60. (Previously Presented) The method of claim 50, further comprising delivering a photo-activatable substance to the airway.

61. (Previously Presented) The method of claim 60, wherein the photo-activatable substance comprises a psoralen.

62. (Previously Presented) The method of claim 60, wherein an absorption spectrum of the photo-activatable substance is matched to the source of energy.

**EVIDENCE APPENDIX**

A copy of evidence pursuant to §§ 1.130, 1.131, or 1.132 and/or evidence entered by or relied upon by the examiner that is relevant to this appeal is attached hereto. A Declaration Under 37 C.F.R. § 1.132 of Dr. Michael D. Laufer was entered by the Examiner in the 16 January 2009 Office Action.

Declaration Under 37 C.F.R. § 1.132 of Dr. Michael D. Laufer.

**RELATED PROCEEDINGS APPENDIX**

In the related proceedings referenced in II. above, no answers from the Examiner or decisions from the Board of Patent Appeals and Interference have been filed. As such, copies of decisions in related proceedings are not provided.